

ATTORNEYS FOR DEFENDANTS

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and (2) Plaintiff has failed to adequately plead that the calls were generated from a prohibited Automatic Telephone Dialing System as defined by the United States Supreme Court in *Facebook v. Duguid*, 141 S.Ct. 1163 (2021).

Supplemental Argument

First, Plaintiff fails to plead facts sufficient to support that it was Montco Victory or Joseph Foster who called, or authorized the call to, Plaintiff. Plaintiff alleges that the service provider for the telephone number that called him is company called Twilio. (Am. Compl. ¶ 36.) From there, Plaintiff makes the leap to conclusorily allege that Defendants called Plaintiff. Plaintiff does not allege that Defendants Montco Victory or Joseph Foster have any relationship at all to Twilio. Plaintiff does not allege that Defendants Montco Victory or Joseph Foster authorized the caller, identified as “Laryssa,” to make the call on their behalf. Plaintiff does not allege that the caller was an agent or employee of any of the defendants. Nor does Plaintiff allege that the phone number that called him is associated with any of the defendants. At most, Plaintiff alleges that the caller was “with ‘the Montgomery County Democrats’” and that the call was “paid for by the Montco Victory.” (Am. Compl. ¶¶ 42-43.) Nevertheless, these allegations, on their own, are insufficient to meet Plaintiff’s burden. *See Smith v. Direct Building Supplies, LLC* No. 20-3583, 2021 WL 4623275, at *3 (E.D. Pa. Oct. 7, 2021) (“The sole factual allegation linking Defendant to the calls is that the caller identified himself as associated with Defendant ***which is insufficient*** under the *Iqbal* pleading standards.”) (citations omitted).

Second, and most importantly, Plaintiff fails to adequately allege that the calls placed to his telephone were made using an Automatic Telephone Dialing System prohibited by the Telephone Consumer Protection Act of 1991 (“TCPA”). The Amended Complaint makes clear that the caller intended to call Plaintiff (as she requested him by name) because he was a voter

registered in Montgomery County, Pennsylvania. (Am. Compl. ¶ 42.) As explained in great detail in the MCDC Motion, in order for the call to be prohibited under the TCPA, “the equipment in question **must use a random or sequential number generator.**” *Facebook*, 141 S.Ct. at 1170. The Third Circuit confirmed this requirement and held that calls made from a curated list of phone numbers, such as a list of Montgomery County registered voters, do not violate the TCPA. *Panzarella v. Navient Solutions*, 37 F.4th 867, 881 (3d Cir. 2022).

Accordingly, even if Plaintiff has or can sufficiently allege that Defendants made the alleged calls, he cannot allege that those calls violate the TCPA as the Amended Complaint on its fact makes clear the calls were made to Plaintiff specifically because he was registered to vote in Montgomery County.

CONCLUSION

For the reasons discussed above and in the MCDC Motion, Defendants Montco Victory and Joseph Foster respectfully request that the Court grant their Motion to Dismiss and dismiss all claims against them with prejudice.

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Respectfully submitted,

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